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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR         | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------------|---------------------|------------------|
| 09/410,999      | 10/01/1999  | CHRISTOPHER COSGROVE CREAGAN | 13098               | 7748             |

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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 12/10/2001

9

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 09/410,999             | CREAGAN ET AL.      |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Alicia Chevalier       | 1772                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 October 2001.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

**RESPONSE TO AMENDMENT**

***WITHDRAWN REJECTIONS***

1. The 35 U.S.C. §112 rejections of record in paper #7, page 2, paragraph #1 have been withdrawn due to Applicant's amendment in paper #8.
2. The 35 U.S.C. §102/103 rejection of claims 1, 3, 4, and 5 as anticipated by or over Thompson (5,368,926) of record in paper #7, pages 2-3, paragraph #3 have been withdrawn due to Applicant's amendment in paper #8.
3. The 35 U.S.C. §103 rejection of claims 2, 6, 7, 10, and 12-15 over Thompson (5,368,926) of record in paper #7, pages 3-4, paragraph #5 have been withdrawn due to Applicant's amendment in paper #8.
4. The 35 U.S.C. §103 rejection of claim 9 over Thompson (5,368,926) of record in paper #7, page 4, paragraph #6 have been withdrawn due to Applicant's amendment in paper #8.
5. The 35 U.S.C. §103 rejection of claims 8 and 11 over Thompson (5,368,926) in view of Datta (5,695,376) of record in paper #7, pages 4-5, paragraph #7 have been withdrawn due to Applicant's amendment in paper #8.

***REJECTIONS REPEATED***

6. The 35 U.S.C. §103 rejection of claim 16 over Thompson (5,368,926) in view of Datta (5,695,376) and further in view of Powers (5,597,647) is repeated for reasons previously of record in paper #8, pages 5-6, paragraph #8.

***NEW REJECTIONS***

7. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

***Claim Rejections - 35 USC § 103***

8. Claims 1, 2, and 4-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. (5,486,166) in view of Proxmire et al. (5,192,606).

Bishop discloses an absorbent personal care article such as diapers, training pants, incontinence garments, sanitary napkins, bandages and the like with fibrous nonwoven surge layer (col. 3, lines 7-11). Personal care absorbent articles generally have a fluid permeable body side liner and a liquid impermeable backing layer with an absorbent core disposed there between. Bishop's absorbent personal care article further comprises a surge layer (first layer) disposed between the body side liner (second layer) and the absorbent core (third layer). The surge layer is attached to the body liner and the absorbent core to promote liquid transfer. See column 2, lines 34-41.

To further enhance fluid transfer, it is desirable that the fibrous nonwoven web surge layer be attached to the layers directly above and below its exterior surfaces. To this end, suitable attachment means include, but are not limited to, adhesives, thermo bonding, ultrasonic bonding, needling and pin aperturing as well as combinations of the foregoing or other appropriate attachment means. See column 3, lines 35-44.

The surge layer is made of a spunbond nonwoven polyethylene/polypropylene bicomponent (conjugate) fibrous web which is crimped. The surge layer having a basis weight

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of at least 20 grams per square meter. See column 2, lines 42-48 and column 3, line 45 through column 4, line 40.

Since Bishop discloses the same creased material as desired by applicant it is inherent that the creased layer is compression resistant.

Bishop fails to disclose the materials for the body side liner.

Proxmire discloses an absorbent personal care article having a body side liner which exhibits improved softness and dryness and provides for rapid uptake of liquid (col. 1, lines 8-13). The body side liner comprises a spunbond nonwoven polyethylene/polypropylene conjugate fiber having a density within the range of about 0.01 to 0.03 g/cc (col. 17 line 21 through col. 18, line 59). The basis weight of the body side liner is at least about 15 grams per square meter and not more than about 40 gsm (col. 16, lines 49-57). The fibers can further include a treatment/finish of about 0.2-0.8% of ethoxylated ester (wettable) surfactant material (col. 1, lines 57-59).

Proxmire further discloses an intermediate transfer layer under the body side liner comprising an apertured film to permit liquid to readily pass through its thickness to help isolate the wearer's skin from liquids held in absorbent structure (col. 7, lines 28-41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the body side liner of Proxmire as the body side liner of Bishop because of the improved softness, dryness, and rapid uptake of liquid exhibited by Proxmire.

It also would have been obvious to one of ordinary skill in the art at the time the invention was made to add apertures to the surge layer of Bishop as taught by Proxmire because

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the apertures would increased ability of Bishop's surge layer to pass liquid through to the absorbent layer.

Since density is added when a layer is crimped or creased, it is inherent that the body side liner is less dense then the crimped surge layer when the body side liner is uncrimped.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. (5,486,166) in view of Proxmire et al. (5,192,606) as applied to claims 1, 2, above, and further in view of Powers (5,597,647).

Bishop and Proxmire disclose all the limitations of the instant claimed invention except for the material of the absorbent layer.

Powers discloses a personal care product such as diapers, adult incontinence product, and feminine hygiene products (col. 4, lines 57-59) comprising an absorbent layer comprising polyethylene-polypropylene side-by-side conjugate fibers with a weight basis of 0.34 to 102 gsm and density of between 0.026 and about 0.013 ounces/cubic inch (0.022 to 0.045 g/cc) (col. 7, line 44 to col. 8, line 60). The absorbent layer also contains an internal wetting agent to increase the wettability of the layer in an amount of from 0.7 to about 3 weight percent of the layer (col. 7, lines 51-55).

It would have been obvious to one of ordinary skill in art at the time of the invention to use the absorbent layer as taught by Powers as the absorbent layer of the combination of Bishop and Proxmire because of the increased wettability of Powers absorbent layer.

***ANSWERS TO APPLICANT'S ARGUMENTS***

10. Applicant's arguments filed in paper #8 regarding the 35 U.S.C. §112 rejections of record have been considered but are moot since the rejections have been withdrawn.

11. Applicant's arguments filed in paper #8 regarding the Thompson (5,368,926) reference have been carefully considered but are deemed unpersuasive.

Applicant argues that Thompson is directed to a unique class of fibers called "capillary channel fiber" which is not used in the instant invention. Independent claim 1 merely claims a compression resistant first creased layer and independent 16 merely claims a first creased layer of spunbond polyethylene/polypropylene conjugate fibers. To meet the limitation of claim 1 the layer need only be compression resistant and creased, it doesn't even have to be a fibrous layer. The fact that Applicant's invention is not directed to Thompson's unique class of fibers is irrelevant since Applicant's claimed first layer is broad enough to encompass Thompson's particular type of fibers. It is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064.

Applicant admits that Thompson teaches a pleated layer but argues that there is no teaching of why one might want to pleat a layer. Since Thompson clearly discloses a pleated layer and clearly anticipates the limitation, a motivation is not needed since that particular feature is not being modified with an obviousness type rejection. Anticipation is the epitome of obviousness, which needs no motivation.

Applicant further argues that Thompson does not teach or suggest filling the creased or pleated layer with less dense fibers. While this is true, it is irrelevant. The limitations on which

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Applicant relies (i.e., filling the creased or pleated layer with less dense fibers) are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications or drawings that are anticipated or unpatentable.

12. Applicant's arguments filed in paper #8 regarding the Datta (5,695,376) and Powers (5,597,647) references have been carefully considered but are deemed unpersuasive.

Applicant argues that neither Datta or Powers suggest a filled creased surge layer nor do they suggest how or why to combine their teachings with Thompson to produce such a layer. As stated above, the limitations on which Applicant relies (i.e., filling the creased or pleated layer with less dense fibers) are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications or drawings that are anticipated or unpatentable.

### *Conclusion*

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139.

The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Blaine Copenheaver can be reached by dialing (703) 308-1261. The fax phone number for the organization official non-final papers is (703) 872-9310. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac

12/7/01

  
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